

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 265 of 2006

Appellant : Mattulal Verma

Vs.

Respondents : Collector, Rajnandgaon and
another

JUDGMENT

POST FOR JUDGMENT ON 12-09-2006

Sd/-
Dhirendra Mishra
Judge

b

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 265/2006

Appellant : Mattulal Verma

Versus

Respondent : Collector, Rajnandgaon and another

Shri Anup Mazumdar learned counsel for the appellant.

JUDGMENT

(Delivered on 12-9-2006)

Dhirendra Mishra, J

The appellant has preferred this second appeal U/s 100 of the Code of Civil Procedure against the judgment and decree dated 25/3/2006 passed by learned Second Additional District Judge Rajnandgaon in First Appeal No. 38-A/05 by which the appeal preferred by the appellant against the judgment and decree dated 18/12/2001 passed by learned Civil Judge Class-II Rajnandgaon, in Civil Suit No. 227-A/2001 has been dismissed and the suit for declaration and perpetual injunction filed by the appellant has also been dismissed.

2. Undisputedly the suit property was allotted to the appellant under Hire Purchase Agreement by the respondent No.2. Grievance of the appellant is that owners of house No. 89 and 90 have encroached upon the vacant land situated in the western side of the suit property and in the remaining space the defendant No.2 is undertaking construction of public drain though the same has been allotted to him as per the agreement and on the basis of these averments a suit for declaration that the disputed area described in schedule "A" is in the ownership of the plaintiff and the defendants be restrained from constructing the public drain over the same. In the written statement the defendants have contended that the area encroached by the owners of house Nos. 89 and 90 has not been mentioned in the plaint nor they have been arrayed as defendant though they are necessary for adjudication of the suit. It has been further averred that *Kaccha* drain already exists at the dispute space

and it is being used by the inhabitants and they have no plan to erect the *Pakka* drain. The ownership of the plaintiff over the disputed space has been denied.

3. On the basis of the pleadings of the respective parties issues were framed and the suit was dismissed by the trial Court by recording a finding that the plaintiff has not been able to prove encroachment by the owners of House Nos. 89 and 90 and he has also failed to prove that the defendants are constructing *Pakka* drain on the vacant plot situated in the western side of the suit property and the defendant has not executed the registered deed in favour of the plaintiff after handing over the possession of the suit property. Issue No. 6 was also framed to the effect that whether owner encroaching upon house Nos. 89 and 90 is the necessary party, if yes, what is the effect? However the learned trial Court has not dealt with this issue in his judgment and has dismissed suit by recording a finding against issue Nos. 1 to 4.

4. The appeal preferred by the appellant has been dismissed by the impugned judgment with a finding that the appellant has failed to prove the illegal encroachment alleged against the owners of plot Nos. 89 and 90 and also holding that no demarcation regarding encroachment by the owners of house Nos. 89 and 90 has been done and they have not been made parties in the proceedings and in the aforesaid circumstances the findings recorded by the trial Court has been confirmed.

5. Learned counsel for the appellant submits that the Courts below were not justified in dismissing the suit for non joinder of the party as the encroachers were not the necessary party as per the pleadings. It is further argued that there is no dispute with respect to the title of the plaintiff and in the aforesaid circumstances the Courts below ought to have decreed the suit for perpetual injunction and for the above reasons the following substantial questions of law arise for adjudication of this appeal:

- (i) Whether the court below was justified in dismissing the suit of the appellant for non joinder of parties which were not necessary as per his pleadings?

- (ii) Whether the suit filed by the appellant could not be decreed on the admission of his title by the respondents and be enjoined from interfering with his possession over the suit land?
- (iii) Whether the courts below committed an error of law in not declaring the title of the appellant over suit land, though admitted, in absence of demarcation report?

I have heard learned counsel for the appellant.

6. The defendants have disputed the contention of the plaintiff that the disputed drain is being constructed over his land. They have also raised an objection in their written statement that the plaintiff has made an allegation against the owners of house No. 89 and 90, of encroachment over the vacant land and in the aforesaid circumstances the question of identity of the property over the drain being constructed was involved and both the Courts below have rightly dismissed the suit with a finding that the plaintiff has failed to prove the alleged construction of drain over his land as there is no demarcation report. Even otherwise, the owners of house No. 89 and 90 have been rightly held to be the necessary party for adjudication of the dispute raised in the suit.

7. In view of the aforesaid analysis this Court is of the opinion that both the Courts below have not committed any illegality in recording the concurrent finding of fact and dismissing the suit of the plaintiff and thus the impugned judgment and decree do not call for any interference by this Court as no substantial question of law as proposed by the appellant arises for adjudication of this appeal.

8. In the result, the appeal being devoid of substance is liable to be dismissed and it is dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge